IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 14626 of 2004

Between:

Malleboina Sreenu s/o. Balaveeranna
R/o. Vorepenta Maidkuru Mandal, Kadapa District.

..... PETITIONER

AND

1 The Collector and District Magistrate, Kadapa.
2 The Govt., of A.P. rep by its Chief Secretary Secretariat, Hyderabad.
3 The Superintendent of Police Central Prison Cherla Palli, Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to direct the respondents to produce the detenu Sri Bandaru Nagaraju now detained in Central Jail Cherlapalli Hyderabad, before this Hon'ble Court and he may be released forthwith after declaring that his detention is illegal and void.

Counsel for the Petitioner: MR.C.PRAVEEN KUMAR

Counsel for the Respondents : THE ADVOCATE GENERAL

The Court made the following :

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O R D E R: (Per Hon'ble Sri Justice G.Bikshapathy)

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The Order of the District Magistrate, Cuddapah, dated 05.08.2004 detaining the petitioner under the provisions of Prevention of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, is assailed in this Writ Petition.

2. The petitioner was served with the order of detention, dated 05.08.2001. The grounds of detention as enumerated in the Order are as follows:

"You, Sri Bandaru Nagaraju S/o late B.Pedda Narasimhulu, aged about 25 years, Resident of Vonipenta village, Mydukur Mandal, Cuddapah District have indulged in illicit cutting and storing of Red Sanders heart wood causing willful destruction of Red Sanders and causing damage to the public property besides tremendous loss of National Wealth; depletion of green cover resulting in adverse ecological balance having ramification on the health and well being of public in the following (4) events/cases.

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1. O.R.No.14/2004-2004, dated: 05-06-2004

On receipt of reliable information on 05-06-2004 at about 3-00 PM the Forest Range Officer, Vonipenta along with Deputy Range Officer, Vonipenta Section and Range Staff proceeded to Aggibanda locality of Mudireddypalli Beat of Vonipenta Range and reached the area at about 4-00 PM. They found that five members were cutting Red Sander trees and converting them into Rough Dressed logs unauthorizedly after entering illegally into reserve Forest. When intercepted, 5 members of the gang could manage to escape from the scene of offence. They were identified as i.e., 1) Sri Bandaru Nagaraju, S/o.late Pedda Narasimhulu, 2) Sri Vemula Venkatesu S/o.Peda Venkatanna, 3)Sri Vidagottru Nagaraju, S/o.V. Seshaiah, 4) Sri Vidagottru Seshu S/o late V.Pedda Nagabhushanam, and 5) Bandaru Narasimhulu S/o. Pedda Narasimhulu all are the residents of Vonipenta village of Mydukur Mandal. The Forest Officials inspected the surrounding areas and seized 17 rough dressed Red Sander logs weighing 526 Kgs and value at Rs.47,350/- and concluded that the above persons are responsible for the illicit cutting and stocking of the Red Sanders.

On enquiry it was revealed that You are the instigator for over all organizing of Red Sander Smuggling from Government owned Reserve Forest and providing the necessary finance to meet the expenditure related to hiring of labours from the fringe forest villages, hiring of vehicles etc., You are maintaining liaison with Red Sanders traders in Chennai and Cuddapah Districts. Hence, you are charged U/S.20 (1) C (II), (III), (IV), (Vi) and (X) and punishable under section 20d (i) read with Section 29 (4) (a) (i) of A.P.Forest Act 1967, Section 34 IPC (Harboring unique criminal intention of smuggling Red Sanders from Government Reserve Forest). Section 107 IPC (Abetting his accomplices, agents and fringe village labour to commit theft Red Sander heart-wood from Government Reserve Forests). Section 120 B IPC (Entering into criminal conspiracy to commit theft of National property and imperil the economic interest of the state) and Section 379 IPC (theft of National Property). Thus it is quite evident that you are committing offences of illicit cutting, storing and transporting of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth.

2. O.R.No.16/2004-2005, dated 12.06.2004

On receipt of reliable information on 12-06-2004 at about 8.00 AM, the Forest Range Officer, Vonipenta and Staff went to the Thippireddipalli Beat of Vonipenta Range and searched a place Chidugubodu locality. They found that 3 persons were cutting and rough dressing Red Sander trees. On seeing the Forest Officials they had managed to run away from the scene of offence. These 3 persons were identified as (1) Sri Bandaru Nagaraju S/o Late B.Pedda Narasimhulu, Resident of Vonipenta village, aged 25 years, Caste Vadde, 2) Sri Vemula Venkatesu, S/o.V.Pedda Venkatesu, Resident of Vonipenta Village, Aged about 21 years, caste Vadde, and 3) Bandaru Venkatesu, S/o.Late B.Pedda Narasimhulu, Resident of Vonipenta Village, Caste Vadde, and Aged about 20 years. On searching the locality 20 Red Sanders logs illicitly cut, rough dressed and stocks weighed as 653 Kgs and valued at Rs.58,770/- were found.

During the enquiry by the Forest Range Officer, Vonipenta it was revealed that you are the king pin in the entire operation of Red Sander smuggling in the Reserve Forest, Vonipenta range, hiring men from the adjacent villages for cutting the trees, providing necessary finance to meet the expenditure related to hiring of labour and hiring of vehicles etc., and maintaining liaison with Red Sander traders in Chennai and Cuddapah Districts. Hence, you are charged U/s 20 (1) C (II), (III), (IV), (VI) and (X) and punishable under Section 20d (i) read with Section 29 (4) (a) (i) of A.P. Forest Act 1967 and also charged under Section 34 IPC (Harboring unique criminal intention of smuggling Red Sanders from Government Reserve Forests). Section 107 IPC (Abetting his accomplices, agents and fringe village labour to commit theft in Red Sanders Heart-Wood from Government Reserve Forests). Section 120 B IPC (Entering into criminal conspiracy to comit theft of National property and imperil the economic interest of the state) and Section 379 IPC (theft of National Property). Thus it is quite evident that you are committing offences of illicit cutting, storing and transporting of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth.

3. O.R.No.17/2004-2005, dated:20-06-2004

On receipt of reliable information on 20-06-2004 at about 4-00 PM the Forest Range Officer, Vonipenta along with Deputy Range Officer, Vonipenta Section and Range Staff had proceeded to Pedda Yepisela locality of Mudireddypalli Beat of Vonipenta Range and reached the area at about 5-30 PM. They found that 7 members were cutting Red Sander trees and converting them into Rough Dressed logs unauthorizedly after entering illegally into reserve Forest. When intercepted, 5 members of the gang could manage to escape and 2 persons were caught. The Forest Officials inspected the surrounding areas and seized 45 rough dressed Red Sander logs weighed at 2020 Kgs and valued at Rs.1,81,800/- and concluded that the above persons are responsible for illicit cutting and stocking of the same. The arrested persons revealed their names as (1) Malleboina Veera Prasad, S/o.M.Pothuluru, Vonipenta (2) Malleboina Venkatesu, S/o.M.Pedda Pothuluru, Vonipenta, Mydukur Mandal, Cuddapah District. During enquiry Sri Malleboina Veera Prasad and Malleboina Venkatesu revealed that they were instigated through monetary inducements by you and your associates to illicitly cut red sander logs dress them in secret hideouts, stock the same in convenient hideouts and inform the same to the latter for subsequent smuggling to Chennai.

The detailed report of the Forest Range Officer, Vonipenta reveals that you are the over all organizer of Red Sander Smuggling from Government owned Reserve Forest and provide the necessary finance to meet the expenditure related to hiring of labours from the fringe forest villages, hiring of vehicles etc., and maintaining liaison with Red Sanders traders in Chennai and Cuddapah Districts. Thus you were charged U/S. 20 (1) C (II), (III), (IV), (VI) and (X) and punishable under Section 20 D (I) read with Section 29(4) (i) of A.P. Forest Act 1967. He is also charged under Section 34 IPC (Harboring unique criminal intention of smuggling Red Sanders from Government Reserve Forest). Section 107 IPC (Abetting his accomplices, agents and fringe village labour to commit theft red Sanders heart-wood from Government Reserve Forests). Section 120 B IPC (Entering into criminal conspiracy to commit theft of National property and imperil the economic interest of the state) and section 379 IPC (theft of National Property). Thus it is quite evident that you are committing offences of illicit cutting, storing and transporting of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth.

4. O.R.No.20/2004-2005, dated: 27-06-2004

On receipt of reliable information on 27-06-2004 at about 2-00 PM, Sri A.Suryanarayana Reddy, Deputy Range Officer, Vonipenta Section proceeded to Chidugubodu locality of Thippireddipalli Beat along with section staff and made Rasta watch. The staff noticed that from a distance two persons keeping heaps of logs, immediately the staff surrounded the persons, where red sanders logs stocked. The two accused had managed to run away from scene of offence. Then the staff searched the forest area and noticed that 20 Nos Red sander rough dressed logs illicitly felled and kept ready for transport. The staff have

identified that two accused ie., 1) Sri Bandaru Nagaraju S/o Late B.Pedda Narasimhulu, R/o.Vonipenta village, Caste: Vaqdde, Mydukur Mandal and 2) Sri Bandaru Venkatesu S/o.Late B.Pedda Narasimhulu, R/o.Vonipenta Village, Caste: Vadde, Mydukur Mandal of Cuddapah District. The seized Red sander logs were weighed at 765 Kgs and valued at Rs.68,850/-.

Hence you were charged under Section 29 (1) C (II) (III), (IV), (VI) and (X) and punishable under Section 20 D (I) read with section 29 (4) (a) (i) of A.P.Forest Act 1967, Section 34 IPC (Harboring unique criminal intention of smuggling Red Sanders and fringe village labour to commit theft in red Sanders Heart-wood from Government Reserve Forests). Section 120 B IPC (Entering into criminal conspiracy to commit theft of National property and imperil the economic interest of the state) and section 379 IPC (theft of National Property). Thus it is quite evident that you are committing offences of illicit cutting, storing and transporting of Red Sanders causing willful destruction of valuable Red Sanders which is endangered species and national wealth."

3 . Before going into the lis of the case, it is contended by the learned Senior Counsel for the petitioner that the detaining authority has taken into consideration the extraneous matters, which are not required for enabling the authority to issue the detention order. He submits that the charges alleged against the petitioner are not only covered by Section 379, 107 and 120-B of Indian Penal Code, but they are also covered by Sections 20 and Section 29 of the A.P. Forest Act and this question was considered by this Court in a case reported in THALLAPUNENI VENKATESWARLU vs. COLLECTOR AND DISTRICT MAGISTRATE, CUDDAPAH[1] and therefore the impugned order of detention has to be set aside.

4 . The learned Special Government Pleader representing the learned Advocate General takes the assistance from the judgment of Supreme Court in *The Commissioner of Police and others Vs. Smt. C.Anitha*.[2]

5. In the instant case it is observed that the offences were not only alleged against the petitioner under Section 379 IPC covered by Chapter 17 of Act No.1 of 1986, but

a reference was also made to other provisions under the Forest Act. These facts are not present in the decision of the Supreme Court referred to above. Under those circumstances, it has to be necessarily held that the detaining authority has considered the matter, which is not relevant for purpose of issuing the detention order. We find that the principle laid down by this Court referred to above squarely governs the case on hand. Accordingly, we set aside the order of the detention.

6. In the result, the writ petition is allowed and the order passed by Respondent No.1-Collector and District Magistrate, Cuddapah in Ref.C1/562/M/04, dated 05.08.2004 is hereby set aside and the petitioner shall be set at liberty forthwith, if he is not required in any other case.

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G.BIKSHAPATHY, J.

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CH.S.R.K.PRASAD, J.

Dated : 20.09.2004

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To

1 The Collector and District Magistrate, Kadapa.
2 The Chief Secretary, Govt., of A.P. Secretariat, Hyderabad.
3 The Superintendent of Police, Central Prison Cherla Palli, Ranga … Reddy District.

4. 2CCs to the Advocate Genera, High Court of A.P., Hyderabad.

5. 2CD copies